



AFB

RISK PLATFORM

OPERATIONAL RISK EXPERT PANEL – OUTPUT PAPER

**AFB Expert Panels meet regularly and produce Output Papers on behalf of the whole membership (see Note).*

ROLE OF OPERATIONAL RISK IN MANAGING PEOPLE RISK

A. INTRODUCTION

This Output Paper examines the key people risks that were discussed in the Expert Panel and explores the extent to which Covid/lockdown/working from home have impacted these risks. In short, it is clear that these factors have had, and are likely to continue to have, a significant impact on these risks and, therefore, on the necessary steps to mitigate these risks, increasing the importance of Operational Risk working with HR colleagues to identify and properly mitigate. The poll results shared during the discussion are at the end of this Output Paper.

B. KEY PEOPLE RISKS

1. Health and Safety

Key legal duties – Every employer has a legal duty under the Health and Safety Act to ensure, so far as is reasonably practicable, the health and safety and welfare of its employees, including, as part of this, provision of a safe working environment. This duty is mirrored by contractual and tortious duties to employees to the same effect.

Employees themselves also owe a statutory duty to take care of their own and colleagues' health and safety, effectively meaning they have a duty to co-operate in steps taken and policies put in place in relation to the provision of a safe working environment at their employer's premises.

Covid has impacted, both directly and indirectly in relation to health and safety risk.

Direct impact – In relation to direct impact on health and safety risk, the most obvious impact is the need for an employer to provide a safe working environment in the office requiring risk assessments, consultation with staff and ensuring, and being able to demonstrate, full compliance with Government Covid-19 Secure Guidance. No doubt, this is where employers' principal focus will have been over recent months and this will, again, come into sharp profile as and when, hopefully, lockdown measures are relaxed from June this year.

Indirect impact – Working from home has also created/impacted on additional health and safety risks.

Firstly, the risk flowing from employees' physical work environment at home and, particularly, the need to ensure that DSE workstation assessments are appropriately carried out and any necessary steps taken as a result. Ensuring this will be particularly important for employers which envisage working from home continuing to play a substantial part of ongoing work arrangements for staff.

Additionally, it is clear that working from home can be a factor leading to, or at least contributing to, work-related stress and, potentially, therefore, connected mental health issues. The Health and Safety Executive is clear,

“Homeworking can cause work-related stress and affect people’s mental health”.

The FCA has also referenced concerns regarding employees suffering from “lockdown fatigue” as a result of long-term working from home, for some, increased working hours, and, no doubt, other pressures connected to Covid and lockdown.

2. Conduct risk

The FCA references both financial and non-financial conduct risk.

Financial conduct risk – Financial conduct risk would include any form of misconduct such as fraud, involvement in money laundering or any form of insider trading or other market abuse. Particular risk factors coming out of Covid/lockdown/working from home include:

- Ensuring the security of confidential financial information.
- This could be a particular issue for younger employees who may be sharing homes with flatmates.
- The reduced potential for self-policing from front office staff. For example, the chances of detection as a result of other staff overhearing, is taken away, as a result of staff working remotely from home.
- Increased risk from privately owned devices.
- The FCA has particularly referenced this as a concern, see talk by *FCA Director, Market Oversight, Julia Hoggett “Market abuse in a time of Coronavirus”* on 12 October 2020 at the City Financial Global event.
- Potentially an increased personal dealing risk. Again, referenced by the FCA as a particular concern. This follows, what is apparently, a significant increase in the opening of new personal trading accounts, particularly, by younger people.

Ultimately, the significant challenge for all banks where staff are currently, and are likely to continue to, work from home, will be to provide equivalent levels of security/surveillance where employees work from home as apply where they work in the office.

Non-financial conduct risk – The FCA is also particularly concerned regarding non-financial conduct risk. This would, for example, include bullying, sexual harassment of a colleague or other discriminatory conduct. The FCA has made a number of announcements/indicated in a number of forums, that it regards such misconduct particularly seriously and that instances of such misconduct could have a bearing on its assessment of firms and individuals subject to its Senior Manager and Certification regimes. The FCA also has made clear that instances of such conduct will raise wider concerns regarding regulatory compliance as it takes the view that they may be indicative of a culture which does not encourage speaking out. The following quotes from the FCA indicate this.

“The way firms handle non-financial misconduct, including allegations of sexual misconduct, is potentially relevant to our assessment of that firm, in the same way that their handling of insider dealing, market manipulation or any other misconduct is”.

“My view... is that non-financial misconduct... for example, bullying, harassment, sexual harassment... creates an unsafe atmosphere to work in and is not just wrong, it will lead to poor outcomes, it will not lead to speaking up”.

“Instances of non-financial misconduct could speak to personal integrity and may have implications for our view of the fitness and propriety of individuals within our Senior Managers and Certification Regime”.

Working from home, clearly impacts on the risk of this type of misconduct. Particularly, as a result of the increased difficulty of maintaining an appropriate culture where employees are not in work and reduced visibility where employees are suffering from/participating in this type of misconduct. Employees suffering from this type of misconduct may also feel more isolated and less able to raise concerns as a result.

3. Misuse of confidential information

This would, in addition to the risk of some of the financial misconduct already referenced, such as insider dealing, include other issues such as, for example, copying client data in advance of leaving to join a competitor or providing colleague details in order to assist a recruitment exercise as part of a team move.

Risk, once again, necessarily increases as a result of working from home given employees having greater opportunity as a result of less visibility and, therefore, scope for oversight and detection.

4. Cyber security

Once again, ultimately, the challenge for all employers is ensuring that those working from home with remote access are working in as cyber secure a way as if they were in the office. As already flagged, risk might increase as a result of employees using personal devices.

In addition to the risk from sophisticated hacking etc., there will also, of course, be more mundane additional risk, for example, as a result of those working from home, writing down passcodes/leaving laptops open and unattended etc., with risk from partners/others with whom they are living.

5. Employment claims

The various increased risks highlighted above all potentially impact in relation to the risk of employment law claims. For example, the risk of an individual suffering from bullying and/or stress and, therefore, pursuing a grievance and, potentially, a claim.

Less obviously there could also be a longer-term impact on risk arising out of issues relating to employees' performance, appraisals and bonus decisions. For example, it may be more difficult for a line manager to address performance issues in circumstances where, as a result of home-working, there has been less direct visibility and oversight and, therefore, there is less direct evidence to support performance failings.

Similarly, and as a result, it may be more difficult for line managers to justify performance ratings during appraisals and then, ultimately decisions regarding bonus. Being able to justify these types of decisions is particularly important for all banks with a view to being in a position to rebut discrimination allegations.

Inevitably, there will be a further risk of employment claims arising out of how banks and individual line managers deal with issues, firstly, regarding a return to office working, as and when lockdown restrictions start to be eased, and, in due course, arising out of what may be an increase in flexible working requests.

The key point is that all employers will need to consider very carefully exactly how they communicate and encourage a return to office working and be very sensitive and responsive to any individual employee concerns.

In due course, all employers should also anticipate a potential increase in flexible working requests, as a result of employees, having become accustomed to working from home, having found they are able to carry out their roles effectively and wanting to continue to do so. Again, any such requests would need to be carefully responded to, particularly given the risk of indirect discrimination claims.

6. Soft people risks

Possibly, the most significant impact of Covid/lockdown/working from home is in relation to less tangible "soft" people risks. For example, this can include impact on culture. Particularly, the challenge of how to ensure a proper culture amongst staff when working remotely.

Also, of course, the risk of impact in relation to employees' performance/productivity as a result of performance in role being less visible and there being less opportunity for learning from/oversight by colleagues/line managers. Ultimately, these sorts of issues could, of course, impact employee morale and, in the longer-term, impact employee retention.

C. FUTURE WAYS OF WORKING

Recent weeks have seen a number of interesting and conflicting statements and actions by major banks. By way of illustration:

- Goldman Sachs, David Solomon

"It [referencing homeworking] is not a new normal. It's an aberration that we are going to correct as soon as possible".

- JP Morgan – Jamie Diamond

"There are a lot of people who have been hired into our companies who have never been into our company. How do you build a culture and character? How are you going to learn properly?"

- Barclays – Jess Staley

"I don't think it is sustainable. It will increasingly be a challenge to maintain the culture and collaboration that these large institutions seek to have and should have".

- Lloyds – announced their plan to cut office space by 20% within 3 years.
- HSBC – announced a 40% cut in its office footprint.

Whilst, no doubt, different banks will apply different approaches, what does seem clear is that one way or another, working from home will be more usual than it was pre-Covid and lockdown and, therefore the risks, as flagged above, will be a continuing feature.

D. POTENTIAL MONITOR METRICS

These could include a variety of measures. For example:

- Monitoring data system use (surveillance).
- Ensuring line management oversight.
- Review of employees' output.
- Appraisals.
- Sickness data, particularly, any data suggesting an increase in sickness absence/stress-related absences.
- Levels of grievance/whistleblowing.
- Employee assistance programme data.
- Staff satisfaction surveys.
- Retention data.

E. MITIGATING THE ABOVE RISKS

This will include a variety of steps, dependent on the risk, from ensuring employees appropriately carry out homework station health and safety assessments, to training line managers in supporting their reports and recognising signs of stress and utilising the latest cyber security technology.

What is clear, however, is that a holistic and joined-up strategy will be required and any such strategy will have to be kept under constant review, requiring that Operational Risk and HR teams work closely together.

F. KEY THEMES DURING PANEL DISCUSSION

Discussion centred on:

- the extent to which “people risk” is defined;
- the view that, ultimately, use of potentially available dashboard metrics may be constrained as a result of confidentiality concerns;
- the extent to which senior managers may/may not regard all people risk issues as solely an issue for HR;
- discussions surrounding prevalence of sickness absence and a view in fact that sickness absence may have reduced, given that employees do not need to travel in and out;
- a concern referenced in relation to “key person dependency”; i.e., particular employees taking on significant workloads together with a tendency for the home/work day to be blurred and/or for there to be a perception that employees should be on line from 7:00 in the morning until 7:00 at night, effectively, for any period during which they might also have commuted;
- discussion around holiday and the extent to which holiday has been taken and/or to which banks have enforced any requirement to take a two-week holiday, itself a requirement designed to address financial conduct risk;
- a view that in relation to retention of staff, there may be a greater risk of losing staff, notwithstanding the current economic environment as a result of it being easier for employees to go through virtual recruitment exercises whilst working from home.

NOTE

Meetings of AFB Expert Panels are held in compliance with AFB’s Competition Law Guidance. All issues discussed are included in the relevant Output Paper. AFB holds a central record of all attendees at Expert Panel Meetings. AFB Expert Panel Output Papers are intended as general guidance and no action should be taken in reliance on them without specific legal advice.

QUERIES AND FOLLOW-UP

If you wish to speak to one of the AFB team, please feel free to contact

Ilza Javed, Associate, Practice and Events

Tel: 020 7283 8300

Email: ilza.javed@foreignbanks.org.uk

Alternatively, if you would like any further information about any of these matters, please feel free to contact the following individuals at Marriott Harrison LLP below:

Bob Mecrate-Butcher, Partner

Tel: 020 7209 2017/ 07471 953174

Email: bob.mecrate-butcher@marriottharrison.co.uk

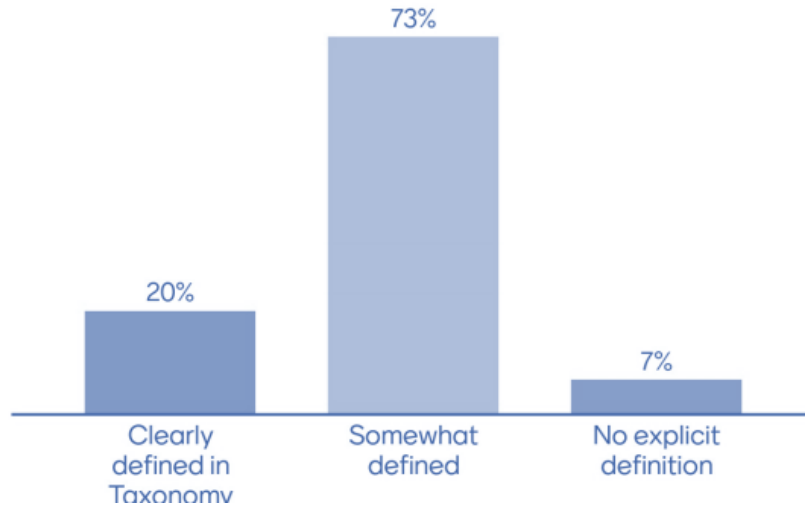
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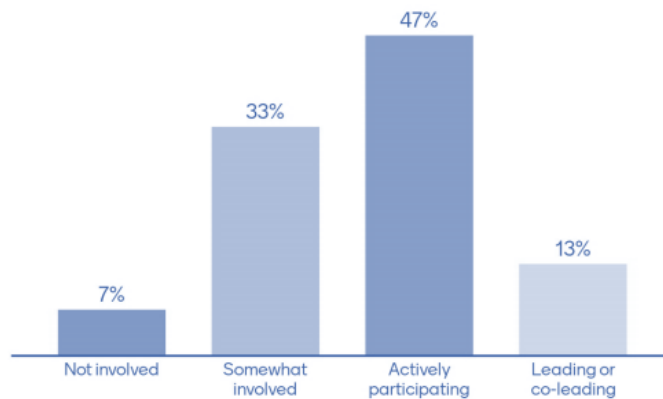
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POLL RESULTS

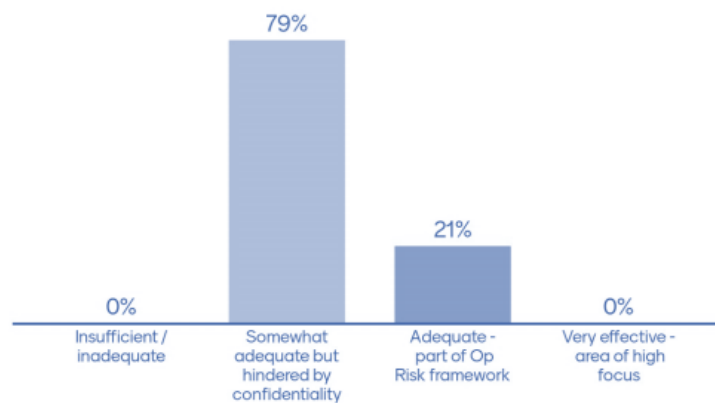
People Risk: Definition



Operational Risk Department: Involvement in People Risk management



Right tools and processes to identify, assess and manage People Risk



REPRESENTATIVE MEMBER BANKS
Elena Pykhova (Chair)
ABN AMRO Bank N.V.
Ahli United Bank (UK) plc
Al Rayan Bank PLC
ANZ Banking Group Limited
BACB plc
Bank of China
Bank of Communications London Branch
Commonwealth Bank of Australia
Crédit Industriel et Commercial
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